



[4410-05P]

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 500 and 553

[Docket No. BOP-1163]

RIN 1120-AB63

Contraband and Inmate Personal Property: Technical Change

AGENCY: Bureau of Prisons, Justice.

ACTION: Final Rule.

SUMMARY: In this document, the Bureau of Prisons makes a minor technical change to its regulations on contraband and inmate personal property to maintain consistency in language which describes the purpose of the regulations as ensuring the safety, security, or good order of the facility or protection of the public.

DATES: This rule will be effective on [insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

SUPPLEMENTARY INFORMATION:

In this document, the Bureau of Prisons (Bureau) finalizes a minor technical change to its regulations on contraband and inmate

personal property to maintain consistency in language which describes the purpose of the regulations as ensuring the "safety, security, or good order of the facility or protection of the public."

Variations on this phrase appear throughout the Bureau's regulations in 28 CFR Chapter V. See 28 CFR §§ 500.1(h), 501.2(b), 501.3(b), 511.10(a), 511.11(a), 511.12(a), 511.15(b), 511.17(b), 540.12(a), 540.14(c) and (d), 540.15(d), 540.40, 540.44(c), 540.51(h), 540.70, 540.71(b) and (d), 540.100(a), 540.101(a), 541.12, 541.43(b), 541.63(c), 543.11(f), 543.14(a) and (c), 543.15(c), 543.16(b), 544.20, 544.21(b), 548.10, 548.16 - 548.18, 549.13(b), 549.50, 549.51(b), 551.1, 551.10, 551.12(d), 551.16(a), 551.31(b), 551.34(b), 551.35, 551.71(d), 551.110(a), 551.112(b), 551.113(a), 551.115(a), 552.13(b), 552.20, 552.21(a) and (d), 553.11(h), 553.12(b).

The Bureau has conformed the phrase in all revised regulations since approximately 2005. This rule likewise conforms this phrase in the Bureau's regulations on contraband. An interim rule on this subject was published on August 3, 2015 (80 FR 45883), and became effective on September 2, 2015, although public comments were accepted until October 2, 2015.

Prior to the September 2, 2015, effective date of the interim rule, the definition of contraband in § 500.1(h) read as follows:

"Contraband is material prohibited by law, or by regulation, or material which can reasonably be expected to cause physical injury or adversely affect the security, safety, or good order of the institution." The interim rule conformed the "security, safety, or good order" phrase to the language we have used in recent years, to read as follows: "Contraband is material prohibited by law, regulation, or policy that can reasonably be expected to cause physical injury or adversely affect the safety, security, or good order of the facility or protection of the public."

Likewise, to conform the phrase and underscore the importance of prohibiting contraband, we added the phrase to the end of the first sentence of § 553.10, regarding inmate personal property, to read as follows: "It is the policy of the Bureau of Prisons that an inmate may possess ordinarily only that property which the inmate is authorized to retain upon admission to the institution, which is issued while the inmate is in custody, which the inmate purchases in the institution commissary, or which is approved by staff to be mailed to, or otherwise received by an inmate, *that does not threaten the safety, security, or good order of the facility or protection of the public.*" [Emphasis added.] Further, § 543.12(b) contained another description/definition of contraband, categorizing it as

either “hard contraband” or “nuisance contraband.” The interim rule added the “safety, security” phrase to this regulation as well.

It is important to note that neither the interim nor this final rule change the substantive requirements or obligations relating to petitions for commutation of sentence, nor do they seek to alter the Bureau’s responsibilities in this regard.

Public Comments

We received two comments on the August 3, 2015 interim rule via the publicly-accessible regulations.gov website.

One commenter requested that the Bureau of Prisons “plainly spell out the changes that are being put out for public notice,” indicating confusion with regard to the interim rule changes.

The interim rule contained an explanation of the changes made by the interim rule. It is possible that the commenter may have read only the summary available on the regulations.gov website, rather than the entire interim rule document. However, for the benefit of any who may have been confused by the interim rule, we offer the following explanation.

The interim rule document made a minor technical change to the Bureau of Prisons regulations on contraband and inmate personal property: We added the phrase “safety, security, or good order of

the facility or protection of the public.” We did this to show that this is the purpose of the contraband regulations - to ensure the “safety, security, or good order of the facility or protection of the public.” We also did this because this phrase appears, for the same purpose, throughout the Bureau’s other regulations, and we have used this phrase in new regulations, when possible, since 2005. The addition of the phrase did not change the meaning or requirements of the regulations to which it was added, and did not alter the Bureau’s responsibilities.

The second commenter stated as follows: “So many times inmates come to facilities and mix with wrong crowds out of fear or intimidation. Leaving lockers unlocked due to [comfort] and many other reasons. These things should be [taken into account] if this happens three times in one year they should be further reviews on the inmates. This is not tolerated but common for Camps.” This comment is not relevant to the current regulation change, which does not discuss inmate lockers or storage of personal property. The Bureau will take this comment into consideration when developing new policy with regard to inmates in federal prison camps.

For the aforementioned reasons, the Bureau now finalizes the interim rule published on August 2, 2015, without change.

Executive Order 12866. This regulation falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132. This regulation will not have substantial direct effect on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act. The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons,

and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995. This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996. This regulation is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Parts 500 and 553

Prisoners.

Kathleen M. Kenney
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Federal Bureau of Prisons

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, the interim rule amending 28 CFR parts 500 and 553, which was published at 80 FR 45883, on August 3, 2015, is adopted as a final rule without change.

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